

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN W. GOFF,

Plaintiff,

vs.

PHOENIX-DURANGO, LLC;
JEREMIAH A. HENDERSON, II; and
JEREMIAH A. HENDERSON, III

Defendants.

*
*
*
*
*
*
*
*
*
*

Civil Action No. 2:06cv389-SRW

MOTION FOR RELEASE OF FUNDS

COMES NOW the Plaintiff John W. Goff, by and through his attorney, in the above cause of action and requests that this Honorable Court issue an order releasing Ten Thousand Two Hundred Dollars (\$10,200) that was interpled to an account believed to be maintained by the Circuit Clerk's Office of Montgomery County, Alabama and states as reasons the following:

1. On March 24, 2006, Plaintiff filed a Complaint for Temporary Restraining Order and Other Relief. On the same date, Montgomery County Circuit Court Judge Price set bond at Five Thousand Dollars (\$5,000) on the temporary restraining order.

2. On April 7, 2006, pursuant to the order of the Honorable Charles Price, Plaintiff interpled Five Thousand Dollars (\$5,000) with the Circuit Court of Montgomery County as bond for the requisite injunctive relief. Additionally, the Plaintiff interpled Five Thousand Two Hundred Dollars (\$5,200) in an effort to further maintain his injunctive relief.

3. The parties reached an agreement wherein the foreclosure was stopped. Thus, previously imposed injunctive relief was withdrawn.

4. Given that the parties reached an agreement on the foreclosure matter, Plaintiff filed a Motion to Withdraw Bond Money in the Circuit Court of Montgomery County, Alabama on May 4, 2006. The Circuit Court of Montgomery County granted said motion.

5. However, the Defendants removed the case to the United States District Court for the Middle District of Alabama on April 26, 2005. Thus, Montgomery County Circuit Court Judge McCooey withdrew her earlier order and denied the Plaintiff's motion, without prejudice, for lack of jurisdiction.

6. Consequently, as an agreement was reached, with regard to the foreclosure, the injunctive relief for which the money was interpled is no longer imposed, as recognized by the Circuit Court of Montgomery County, the Plaintiff's Motion for Release of Funds is due to be granted.

WHEREFORE, the above premises considered, the Plaintiff moves this Honorable Court to issue an order releasing Ten Thousand Two Hundred Dollars (\$10,200) to the Plaintiff in the above styled cause of action.

Respectfully submitted this 19th day of May 2006.

s/ Thomas T. Gallion, III

Thomas T. Gallion, III (GAL010)

OF COUNSEL:
Haskell Slaughter Young & Gallion, LLC
305 South Lawrence Street
P.O. Box 4660
Montgomery, Alabama 36103-4660
(334) 265-8573
fax: (334) 264-7945

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of May 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send notification of such filing to the following parties or counsel:

Vernon L. Wells, II, Esq.
C. Ellis Brazeal, Esq.
Walston, Wells & Birchall, LLP
1819 5th Avenue North, Suite 1100
Birmingham, Alabama 35203
(205) 24405200
fax: (205) 244-5400

Kay K. Bains, Esq.
Bradley Arant Rose & White, LLP
1819 5th Avenue North
Birmingham, Alabama 35203
(205) 521-8000
fax: (205) 521-8800

Wendell Cauley, Esq.
Bradley Arant Rose & White, LLP
401 Adams Avenue, Suite 780
Montgomery, Alabama 36104
(334) 956-7700
fax: (334) 956-7701

s/ Thomas T. Gallion, III

Of Counsel

26934-008
#20,534